



Company on the property of North Star BlueScope Steel (“NSBS”). Edw. C. Levy Co. denies all remaining allegations set forth in paragraph 2 of the Complaint which are not expressly admitted herein.

3. Paragraph 3 of the Complaint is not directed against this defendant.

4. Paragraph 4 of the Complaint is not directed against this defendant.

5. Answering paragraph 5 of the Complaint, Edw. C. Levy Co. admits that NSBS entered into an agreement with Butler Mill Service Company dba Fulton Mill Service Company to process slag on NSBS’s steel mill property in Fulton County, Ohio, that in 2010 Butler Mill Service Company changed its name to Levy Environmental Services Company, which has continued to operate Fulton Mill Service Company. Edw. C. Levy Co. denies any allegations contained in paragraph 5 of the complaint that are not expressly admitted herein.

6. Paragraph 6 of the Complaint is not directed against this defendant.

7. Answering paragraph 7 of the Complaint, Edw. C. Levy Co. denies that defendant North Star BlueScope Steel is the owner of the subject aggregate/slag processing plant on its property, and specifically states that Levy Environmental Services Company dba Fulton Mill Service Company is the owner of the slag processing plant.

8. Answering paragraph 8 of the Complaint, Edw. C. Levy Co. states that it designed and constructed a slag processing plant on defendant NSBS’s premises in 1996. Edw. C. Levy Co. denies any allegations contained in paragraph 8 of the Complaint that are not expressly admitted herein.

9. Paragraph 9 of the Complaint is not directed against this defendant.

10. Paragraph 10 of the Complaint is not directed against this defendant.

11. Paragraph 11 of the Complaint is not directed against this defendant.

12. Edw. C. Levy Co. admits the allegations contained in paragraph 12 of the Complaint.

13. Paragraph 13 of the Complaint is not directed against this defendant.

14. Paragraph 14 of the Complaint is not directed against this defendant.

15. Edw. C. Levy Co. denies the allegations contained in paragraph 15 of the Complaint.

16. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

17. Edw. C. Levy Co. denies the allegations contained in paragraph 17 of the Complaint.

18. Edw. C. Levy Co. admits that Theodore Lucio fell to the ground while working at the slag plant on February 25, 2013, during the course and scope of his employment with Levy Environmental Services Company dba Fulton Mill Service Company. Edw. C. Levy Co. denies all remaining allegations contained in paragraph 18 of the Complaint.

19. Edw. C. Levy Co. denies the allegations contained in paragraph 19 of the Complaint.

20. Edw. C. Levy Co. denies the allegations contained in paragraph 20 of the Complaint.

21. Edw. C. Levy Co. denies the allegations contained in paragraph 21 of the Complaint.

22. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

23. Answering paragraph 23 of the Complaint, Edw. C. Levy Co. repleads that Wayne Engineering was a dba of Edw. C. Levy Co. and that it constructed the subject slag processing plant for Butler Mill Service Company dba Fulton Mill Service Company, which is now known as Levy Environmental Services Company dba Fulton Mill Service Company.

24. Edw. C. Levy Co. admits that it designed and built the subject slag processing plant in 1996.

25. Edw. C. Levy Co. denies the allegations contained in paragraph 25 of the Complaint.

26. Edw. C. Levy Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Complaint and therefore denies same.

27. Edw. C. Levy Co. denies the allegations contained in paragraph 27 of the Complaint.

28. Edw. C. Levy Co. denies the allegations contained in paragraph 28 of the Complaint.

29. Edw. C. Levy Co. denies the allegations contained in paragraph 29 of the Complaint.

30. Edw. C. Levy Co. denies the allegations contained in paragraph 30 of the Complaint.

31. Edw. C. Levy Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Complaint and therefore denies same.

32. Edw. C. Levy Co. denies the allegations contained in paragraph 32 of the Complaint.

33. Edw. C. Levy Co. denies the allegations contained in paragraph 33 of the Complaint.

34. Edw. C. Levy Co. denies the allegations contained in paragraph 34 of the Complaint.

35. Edw. C. Levy Co. denies the allegations contained in paragraph 35 of the Complaint.

36. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

37. Paragraph 37 of the Complaint is not directed against this defendant.

38. Paragraph 38 of the Complaint is not directed against this defendant.

39. Paragraph 39 of the Complaint is not directed against this defendant.

40. Edw. C. Levy Co. repleads its admissions and denials set forth above as if fully rewritten herein.

41. Edw. C. Levy Co. is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Complaint and therefore denies same.

## **SECOND DEFENSE**

42. Plaintiffs have failed to state a claim upon which relief can be granted against Edw. C. Levy Co.

### **THIRD DEFENSE**

43. Plaintiffs' claims are barred by the statutes of repose set forth in Ohio Revised Code §§2305.10(C) and/or 2305.131.

### **FOURTH DEFENSE**

44. Plaintiff was negligent and his negligence caused or contributed to cause any damages claimed herein.

### **FIFTH DEFENSE**

45. Plaintiff assumed the risk of any damages or injuries claimed herein.

### **SIXTH DEFENSE**

46. Plaintiffs' non-economic damages are limited by Ohio Revised Code §2315.18.

### **SEVENTH DEFENSE**

47. This defendant's liability for damages, if any, may be limited to its proportionate share by Ohio Revised Code §§2307.22 and 2307.23.

### **EIGHTH DEFENSE**

48. To the extent there is a settlement with another person or entity for the injuries claimed in this action, plaintiff's recovery against this defendant, if any, must be reduced by the set-off provisions contained in Ohio Revised Code §2307.28 and/or by common law.

### **NINTH DEFENSE**

49. Plaintiff may have failed to mitigate his damages.

### **TENTH DEFENSE**

50. Plaintiff's injuries were the result of his own failure to follow fall protection safety instructions provided to him by his employer.

### **ELEVENTH DEFENSE**

51. Edw. C. Levy Co. reserves the right to add additional affirmative defenses as discovery proceeds.

**WHEREFORE**, Edw. C. Levy Co. prays that the Complaint be dismissed and that it recover its costs herein incurred.

EASTMAN & SMITH LTD.

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Attorneys for Defendant  
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### **PROOF OF SERVICE**

I hereby certify that on April 24, 2015, a copy of the foregoing **Separate Answer of Edw. C. Levy Co.** was filed electronically with the Court. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

/s/ Stuart J. Goldberg  
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Edw. C. Levy Co.